

**Cincinnati Printing Pressmen, Assistants and Offset Workers' Union Local 11-C, affiliated with Graphic Communications International Union, AFL-CIO-CLC and S. Rosenthal & Company, Inc. and Cincinnati Typographical Union Local No. 3 Communications Workers of America, #14519, AFL-CIO-CLC. Case 9-CD-467**

September 30, 1993

**DECISION AND DETERMINATION OF DISPUTE**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

The charge in this Section 10(k) proceeding was filed April 2, 1993, by S. Rosenthal & Company, Inc., the Employer, alleging that the Respondent, Cincinnati Printing Pressmen, Assistants and Offset Workers' Union Local 11-C, affiliated with Graphic Communications International Union, AFL-CIO-CLC (GCIU), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing or requiring the Employer to assign certain work to employees it represents rather than to employees represented by Cincinnati Typographical Union Local No. 3 Communications Workers of America, #14519, AFL-CIO-CLC (CWA). The hearing was held on May 17, 1993, before Hearing Officer Heather E. McClure. Thereafter, the Employer, GCIU, and CWA filed briefs in support of their positions.

The National Labor Relations Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

**I. JURISDICTION**

The Employer is an Ohio corporation with an office and place of business in Cincinnati, Ohio, where it is engaged in the business of printing publications and catalogs. During the 12 months preceding the hearing, a representative period, the Employer, in the course and conduct of its business, sold and shipped from its Cincinnati, Ohio facility goods valued in excess of \$50,000 directly to points outside the State of Ohio. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that GCIU and CWA are labor organizations within the meaning of Section 2(5) of the Act.

**II. DISPUTE**

*A. Background and Facts of Dispute*

CWA represents employees who perform work in the Employer's photo comp department. GCIU represents employees who perform work in the pre-press department. There are approximately 28 employees in

the GCIU bargaining unit, and 5 employees in the CWA bargaining unit. As set forth in its collective-bargaining agreement with the Employer, GCIU has jurisdiction over platemaking, camera operation, darkroom work, stripping, and opaquing. The collective-bargaining agreement between the Employer and CWA provides that CWA has jurisdiction over all composing room work, including preparation of a camera-ready copy and all work customarily done in typesetting departments.

The Employer is engaged in the printing of several regional editions of TV Guide at its 9933 Alliance Road, Cincinnati, Ohio facility for its customer TV Guide. This involves the following work performed by composing room employees represented by CWA: receiving type through a modem transmission from TV Guide headquarters located in Radnor, Pennsylvania; transferring this transmission to the typesetting machine; waxing the paper; pasting it up on art boards; correcting errors found by in-house TV Guide employed editors; and pasting up four-page spreads to be sent to the pre-press area. The pre-press employees represented by GCIU perform the following work on the TV Guide job: photographing the four-page spreads to make a lithographic film in negative; placing the negative on a light table to check for quality of resolution and density of highlights and opaquing; stripping and film assembly; attaching the assembled film to a clear acetate carrier; vacuuming air from the carrier; pinning the carrier to a photographic plate; and developing the plate.

The work in dispute is the installation and operation of an image-setting machine for the Employer's performance of work for its customer TV Guide. The imagesetter will obviate the need for nearly all of the above-listed work tasks. The imagesetter is a piece of equipment through which type and graphics may be transmitted electronically over fiber optics from TV Guide headquarters with the finished, assembled page image already prepared in complete form. An electronic storage at the Employer's facility accepts the transmission which is stored in a drum scanner. No longer will typed copy be produced, edited, and assembled with graphics at the Employer's facility. The operation of the imagesetter will involve hanging raw film on a drum and vacuuming air out and processing the film. Once the film is processed, it must be checked for quality and opaqued before the plate is made.

By letter dated March 4, 1993, the Employer's plant supervisor, James Brown, advised James Elkins, secretary-treasurer/business agent for GCIU, that the Employer intended to install and operate new image-setting equipment and that the work performed on this new equipment would be assigned to employees in the unit represented by GCIU. Subsequently, CWA filed a

grievance in which it asserted that the work associated with the imagesetter fell within its jurisdiction. By letter dated April 16, 1993, Elkins advised Brown that it was his understanding that CWA had protested the imagesetter assignment and had filed a grievance and demanded that the work be assigned to employees it represents. Elkins also informed Brown in this letter that:

[I]n the event that the assignment of work on the imagesetter is arbitrated and the assignment of the work is made by the arbitrator to the [CWA], and the [Employer] reassigns the work to the [CWA], let there be no mistake, [GCIU] will authorize a strike with an object of forcing the [Employer] to honor the original assignment.

#### B. Work in Dispute

The work in dispute is the installation and operation of an image-setting machine for the performance of work at the Employer's 9933 Alliance Road, Cincinnati, Ohio facility for its customer TV Guide.

#### C. Contentions of the Parties

The Employer contends that there is reasonable cause to believe GCIU violated Section 8(b)(4)(D) and that the proceeding is properly before the Board for determination of the dispute. The Employer has expressed its preference that the Board award the disputed work to its employees represented by GCIU. The Employer further contends that the factors of relative skills, economy, and efficiency of the operation, collective-bargaining agreements, and area and industry practice favor an award of the disputed work to these employees.

GCIU also takes the position that the factors of relative skills, economy and efficiency of the operation, and employer preference favor an award of the disputed work to employees represented by it. It further contends that the language of its collective-bargaining agreement with the Employer favors an award of this work to employees it represents.

CWA contends that the language in its collective-bargaining agreement, the Employer's past practice, and the fact that the imagesetter will eliminate the entire photo comp department if composing room employees are not permitted to operate this equipment favor the award of the disputed work to employees it represents.

#### D. Applicability of the Statute

Before the Board may proceed with a determination of dispute under Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

As set forth above, GCIU's secretary-treasurer/-business agent, Elkins, wrote a letter to the Employer's plant supervisor, Brown, advising him that he had heard that CWA had protested the assignment of the image-setter work to employees represented by GCIU. In this letter Elkins further warned the Employer that if the assignment of work on the imagesetter was overturned by an arbitrator's decision and the Employer re-assigned the work to employees represented by CWA, GCIU represented employees would strike with an object of forcing the Employer to honor its original agreement.

We find that the foregoing facts establish reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and, as there is no claim of an agreed-upon method of voluntary adjustment, we find that the dispute is properly before the Board for determination.

#### E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

##### 1. Certifications and collective-bargaining agreements

Neither of the Unions has been shown to have been certified by the Board as the collective-bargaining representative of the Employer's employees.

As noted above, the Employer is party to current collective-bargaining agreements with both GCIU and CWA.

CWA relies on its collective-bargaining agreement with the Employer, noting that section 4(b) of that agreement provides that "[w]hen a computer is used for composing room work [CWA's] jurisdiction includes the preparation of all input and handling of all output, operation of the computer and all input and output devices, [and] programming." CWA contends that the imagesetter performs composing room work. GCIU relies on its collective-bargaining agreement with the Employer which gives it jurisdiction over "all work in connection with . . . camera operation."

Neither collective-bargaining agreement specifically mentions the work in dispute, the operation of the image-setting machine, or appears to specifically cover the work in dispute to the exclusion of the other Union. The factors of certifications and collective-bargaining agreements, therefore, are inconclusive.

## 2. Employer preference and past practice

The Employer has indicated its intention to assign the work in dispute to its employees represented by GCIU. As noted above, by letter dated March 4, 1993, the Employer informed Elkins that it would use only GCIU-represented employees to perform work on the imagesetter. Further, the Employer has stated its preference that all work associated with the imagesetter be awarded to employees represented by GCIU. Accordingly, we find that this factor favors the award of the disputed work to employees represented by GCIU.

## 3. Area and industry practice

There appears to be no area or industry practice for the assignment of image-setter work. There was testimony that another company in Cincinnati operates a small imagesetter and uses employees represented by GCIU to perform the work, but, there is only one bargaining unit at that company. In addition, evidence was presented about an employer who had the first imagesetter installed for TV Guide on the West Coast, but the machinery is not yet operational, and it is a nonunion shop. We find this limited evidence insufficient to establish an area or industry practice.

## 4. Relative skills

The imagesetter will use laser technology to convert image graphics and final copy received from TV Guide in Radnor directly onto a large piece of film. The operation of the imagesetter will require skills such as handling film and negatives. The employees represented by GCIU perform similar work currently. These employees have experience in handling film and negatives on a day-to-day basis. They possess skills such as opaquing, hole punching, film analysis, operating the camera to create negatives, stripping and posting the negatives, and processing the negatives in a darkroom. In contrast, the employees represented by CWA do not have experience with film or handling negatives. Accordingly, the factor of relative skills supports an award of the work to employees represented by GCIU.

## 5. Economy and efficiency of operations

Brown testified that it would be more economical and efficient if employees represented by GCIU perform the disputed work because, as he stated, "the employees who will be doing it, in my opinion, are the employees who are doing similar work now so the work would be more efficient." In addition, Brown stated that all the equipment now utilized by the employees represented by GCIU will be necessary for the operation of the imagesetter. Further, Brown testified that the imagesetter will be located in the pre-press department, which is where the employees represented by GCIU work. Accordingly, we conclude that the factor of economy and efficiency of operation favors an award of the disputed work to employees represented by GCIU.

## Conclusion

After considering all the relevant factors, we conclude that employees represented by GCIU are entitled to perform the work in dispute. We reach this conclusion relying on the factors of employer preference, relative skills, and economy and efficiency of operations. In making this determination, we are awarding the work to employees represented by GCIU, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

## DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of S. Rosenthal & Company, Inc., represented by Cincinnati Printing Pressmen, Assistants and Offset Workers' Union Local 11-C, affiliated with Graphic Communications International Union, AFL-CIO-CLC, are entitled to perform the work of installing and operating an image-setting machine for the performance of work at the Employer's 9933 Alliance Road, Cincinnati, Ohio facility for its customer TV Guide.